

Intergovernmental Water Board (IWB)

Meeting Minutes June 13, 2007 Tigard Public Library 2nd Floor Conference Room 13500 SW Hall Blvd. Tigard, OR 97223

Following approval of these minutes it was noted the footer reflected an incorrect date (June 11, 2007). This has been corrected to read June 13, 2007. *DM*

Members Present:

Gretchen Buehner	Representing the City of Tigard
Patrick Carroll	Representing the City of Durham
George Rhine	Representing the Tigard Water District
Bill Scheiderich	Member at Large
Dick Winn	Representing the City of King City

Members Absent:

None

Staff Present:

Public Works Director Dennis Koellermeier
Quality/Supply Supervisor John Goodrich
City Attorney Tim Ramis
Accounting Supervisor Amanda Bewersdorff
IWB Recorder Greer Gaston

Note: Agenda items are recorded in the minutes in the order they were considered. This order varies from the agenda, thus the discrepancy in numbering.

1. Call to Order, Roll Call and Introductions

Commissioner Scheiderich called the meeting to order at 5:36 p.m.

2. Approval of Minutes – May 9, 2007

Commissioner Carroll motioned to approve the May 9, 2007, minutes; Commissioner Buehner seconded the motion. The minutes were approved by unanimous vote.

Note: The following agenda items were considered together:

4. Novelo Credit for Leak Request

5. Novelo Appeal of Leak Credit

Ms. Bewersdorff provided background information regarding this credit for leak request. Based upon the prescribed process, a credit of \$650.84 was calculated. Credits exceeding \$500, or credits for repairs taking more than ten days, require IWB approval.

Ms. Bewersdorff also explained the Novelos were requesting a credit in addition to the \$650 mentioned above. Their remaining balance after the credit was \$740.82.

Ms. Bewersdorff recommended approval of the initial credit, but suggested the Board not approve an additional credit until the Novelos processed the balance of the bill through their insurance company. If denied by the insurance company, the issue could be brought before the Board at a future meeting.

A timeline for payment and processing the insurance claim was discussed.

Commissioner Carroll motioned to:

- Issue the \$650 credit
- Allow the Novelos a maximum of three months to resolve the remaining balance (\$740) with their insurance company
- If required, bring the matter back to the Board

Commissioner Buehner seconded the motion. The motion was approved by unanimous vote.

3. Public Comments

Marland Henderson, 11795 SW Katherine Street, Tigard, described his background serving on the Water Resource Board and his involvement with the redevelopment of the downtown. Mr. Henderson distributed a handout to the Board. This document is on file in the IWB record. He proposed using reclaimed or recycled water in conjunction with upcoming improvements to Tigard's downtown area.

Mr. Henderson proposed the installation of a one-foot transmission pipe for reclaimed water be included in the City of Tigard's Burnham Street improvement project. Eventually this pipe could be connected to a future pipeline which would extend from the Durham treatment plant, along Hall Boulevard, to Burnham Street. Mr. Henderson said the reclaimed water could be used in irrigation and cleaning, as a water supply for toilets, and to enhance the creek.

Mr. Henderson asked for the Board's endorsement of his proposal.

The Board decided to invite a representative from Clean Water Services to make a presentation at an upcoming meeting in order to obtain information on the capacity, logistics, and feasibility of such a project.

Mr. Henderson was invited to the Board's next meeting.

Note: The following agenda items were considered together:

- 6. Discussion of Tenancy in Common Agreements, Amendments to the 1993 Intergovernmental Agreements, and Bargain and Sale Deeds, and a Commercial Lease of the Water Building**
- 7. Consider a Tenancy in Common Agreement for the Water Building**
- 8. Consider a Tenancy in Common Agreement for the Canterbury Property**
- 9. Consider a Commercial Lease with the City of Tigard for the Water Building**

Mr. Koellermeier provided a brief introduction to this item. He stated the legal documents were intended to implement changes the Board had been discussing for more than two years.

Mr. Ramis brought updated packets of materials and provided them to the Board and audience members. The packets contained the following:

- Resolution (unique to each jurisdiction)
- Amendment to 1993 Intergovernmental Agreement (IGA),(unique to each jurisdiction)
- Tenancy in Common Agreement for the Canterbury Property
- Tenancy in Common Agreement for the Water Building
- Bargain and Sale Deed for the Water Building

- Bargain and Sale Deed for the Canterbury Property
- Water Building Commercial Lease

These materials are on file in the IWB record.

Mr. Ramis provided introductory comments. He noted the legal documents reflected the Board's input during previous discussions. The concepts addressed in the documents include:

- Vesting ownership in the IWB member jurisdictions based on a percentage formula and, thereby, resolving ownership questions. This would remove the issue of "other" versus "system" assets.
- Providing for control of property through tenant in common agreements which would be based on either the majority vote of the four member jurisdictions, or the majority vote of the four member jurisdictions and the member-at-large.
- Assigning a standard approach to the division of maintenance responsibilities between landlord and tenant with regard to the City of Tigard leasing the water building.

Mr. Ramis summarized the documents as follows:

Resolution (unique to each jurisdiction)	This is the fundamental authority document whereby the governing body authorizes its representative to the IWB to take action on the amendment to the IGA, bargain and sale deeds, and the tenant in common agreements
Amendment to the IGA (unique to each jurisdiction)	<p>Amends IGAs between the City of Tigard and Durham, King City, and the Tigard Water District (TWD)</p> <p>Key feature: Item 4, page 2 - Three jurisdiction votes are required to sell or purchase real property.</p> <p>The Board requested the member jurisdictions should be listed in this section of the amendment. They also agreed on dividing this section into two paragraphs, one establishing criteria to sell the property, and one establishing a quorum of the Board.</p>
Tenancy in Common Agreement for the Canterbury Property	<p>Key Features: Item 5, page 2 - Ownership Interest This is based on a formula spelled out in the 1993 IGAs.</p> <p>Commissioner Buehner requested some kind of system be established regarding the reallocation of ownership proportions. This is to take place every 24 months.</p> <p>Commissioner Carroll requested language be added stating ownership proportions would be recalculated at the time of sale.</p> <p>Item 18, page 4 - Restriction's on Sale of Owner's Interest If an Owner sells, the sale must be to one of the other member jurisdictions.</p>

	<p>Item 19, page 5 - Sale of Park Property Allows the sale upon a vote of three out of the four Owner jurisdictions.</p> <p>The Board discussed item 19's reference to item 11. It requested item 11 reflect proceeds be placed directly into the capital improvement fund and not left to the Board's discretion.</p> <p>The Board also discussed amending the original IGAs, at a later date, to state proceeds be placed in the capital improvement fund.</p> <p>Mr. Ramis stated he would change the language in all the documents based upon the Board's direction on this matter.</p> <p>Item 21, page 5 - Required Vote for Determination Addresses who votes on issues other than the sale of the property</p> <p>The Board discussed what would happen to money deposited in a capital improvement fund should one of the member jurisdictions withdraw. The withdrawing jurisdiction would have a claim on a certain percentage of money in the capital improvement fund. Mr. Ramis responded it would be treated as a provisional withdrawal and if an agreement could not be reached, the matter would be settled by the County Board of Commissioners. The Board concluded further review and revision of the original IGAs will be needed to address this matter.</p> <p>Current practice has been for all five members of the Board, including the member-at-large, to vote on issues other than those related to the sale of property. The Board indicated it wanted to continue this practice and would like item 21 amended accordingly.</p> <p>Mr. Ramis stated he would make this change in both Tenancy in Common Agreements.</p> <p>Mr. Koellmeier said partitioning of the Canterbury property will begin after the legal documents are finalized.</p> <p>Mr. Ramis noted the agreement describes the process for selling the surplus property, but the Board needs to refine details such as the size of the property, what's on the property, etc.</p>
<p>Tenancy in Common Agreement for the Water Building</p>	<p>Key Features: Item 19, page 4 - Right of First Refusal The City of Tigard has the right of first refusal if the majority of the owners decide to sell the property. Timelines regarding the sale process are specified.</p>

Bargain and Sale Deeds for the Water Building and Canterbury Properties	<p>These reflect the same ownership percentages as the other documents.</p> <p>Commissioner Buehner asked that the deeds reference the fact that ownership interest was subject to review every two years.</p> <p>Commissioner Carroll requested language regarding recalculation at the time of sale also be added.</p>
Water Building Commercial Lease	<p>Lease between the IWB and the City of Tigard</p> <p>Key Features:</p> <p>Item 1.1, page 2 - Original Term The term of the lease runs through 2018.</p> <p>Item 1.3, page 2 - Renewal Options There are renewal options for two successive terms of five years each.</p> <p>The Board discussed including a "termination for sale" in the lease, but ultimately it decided such a provision was not needed. Should someone want to purchase the property, they would need to negotiate an acceptable deal with the landlord (owners) and the tenant (City of Tigard).</p>

Mr. Ramis asked the IWB Commissioners to take the resolution back to their respective jurisdictions for consideration. Mr. Ramis said he or Mr. Koellermeier could attend these meetings if requested. Mr. Ramis also offered to talk with any member jurisdiction's legal counsel, should they have questions.

Note: Commissioner Scheiderich left the meeting at 6:29 p.m.

Mr. Koellermeier described the calculations used in Exhibit B of the lease. Based upon Portland Metropolitan averages for office and warehouse space, the water building should generate \$178,891 per year in rent revenue. Water operations currently account for \$104,715 of this space. This results in an annual rental balance of \$74,175 that is not related to water functions. Mr. Koellermeier noted a 70 percent City of Tigard rent credit, as Tigard has 70 percent ownership in the property.

Mr. Koellermeier advised the exhibit provided was not the correct version. He focused on explaining the concept of how the rent was calculated, since some of the figures were not accurate.

Building improvements from the walls out, typically the responsibility of the landlord, amounted to \$177,379. These improvements were paid for by the City of Tigard out of a non-water fund. Amortized on an annual basis over the terms of the lease, this amount will be credited against the rent owed by the City of Tigard.

Commissioner Carroll said the Board had agreed rent from non-water activities was going to be placed in the water budget. He questioned the 70 percent rent credit for the City of Tigard asserting rent should go into the water fund. He stated the City of Tigard

should not receive a 70 percent rent credit as listed on the exhibit. The City of Tigard should pay about \$60,000 (\$74,175 rent minus \$14,190 improvement credit) in rent for non-water activities located in the water building.

Commissioner Winn suggested the lines related to the City of Tigard ownership credit be removed from the exhibit.

The Board concurred the City of Tigard should pay approximately \$60,000 in annual rent. Mr. Koellermeier said the exhibit would be changed to reflect the Board's direction.

The Board agreed for the City of Tigard to pay an annual rent payment which would be placed in the water fund. This payment would be made in July. Commissioner Carroll requested the payment date be specified in the lease.

Note: Commissioner Rhine left the meeting at 6:45 p.m.

Commissioner Carroll asked for public comment on this item.

Ken Henschel, 14530 SW 144th Avenue, and Commissioner-Elect for the TWD, said he had received legal advice and advice from the Special Districts Association of Oregon to the effect that an IGA could not be amended without going through a process of public comment, hearings, etc. He expressed concern that the Board should employ a more formal process.

Mr. Ramis said he had spoken with the TWD's legal counsel and the TWD counsel could advise Mr. Henschel on the matter. Based on questions from the Commissioners, Mr. Ramis said he was unaware of any statute requiring an extreme and lengthy process.

Mr. Henschel referred to the lease spreadsheet and requested background information on the total amount of square footage, the amount of water and non-water square footage, and how the actual calculations were prepared.

Mr. Henschel expressed concern that Mr. Koellermeier had researched and determined the rental rates. He suggested this information should have been obtained by an outside, non-biased source. He recommended that since the City of Tigard had prepared the lease, determined rental rates, calculated square footage, and performed the building asset evaluation, the Board should secure an outside opinion to be sure the information was correct.

Commissioner Buehner responded there was clear delineation of the building's water and non-water square footage. Mr. Koellermeier said he would furnish the Board with the background information used to establish the rental rates.

Mr. Henschel inquired about a sublease. Mr. Ramis responded this was addressed in item 13.

Julie Russell, 12662 SW Terraview Drive, and Commissioner-Elect for the TWD, expressed concern about a new voting procedure which was based on the percentage of ownership.

Commissioner Carroll responded this language had been removed from the lease.

Ms. Russell commented, based on legal opinion, the appropriate procedure to consider an amendment to the IGA would be to:

- Have owner jurisdiction and legal counsel review
- Provide public notice
- Provide for a period for public comment

She added the IGA specifically states on page 14, item 15, that any amendment must be approved by governing bodies.

Commissioner Carroll responded the governing bodies were being asked to approve the amendments, and the IWB would consider the documents in July following owner jurisdiction approval. He added the Board's actions made the IGAs more fair and equitable documents, documents which represented the interests of the group as a whole.

Commissioner Buehner added it was in the group's best interest for revenues to be placed in the water fund as there would be sizable expenses associated with the implementation of the long-term water plan.

Ms. Russell stated the timing of this matter was questionable. She urged the Board to follow correct procedures and provide opportunities for public comment. She said the public was concerned and would assume Tigard was trying to do something inappropriate.

Several Board members responded they had been working on this matter for more than a year.

Bert Cornick, 14604 SW 141st Avenue, and Commissioner-Elect for the TWD, expressed his support for removing Tigard's ownership credit from the lease. Mr. Cornick added that it would behoove the Board to have an outside consultant evaluate the rent to avoid the appearance of any impropriety. He commented commercial brokers could be contacted to provide a letter of opinion.

Several Commissioners stated Mr. Koellermeier had researched the rental rates at the Board's request. Mr. Koellermeier offered to provide the Board with the background information used to determine the rates.

Mr. Henschel and Mr. Cornick asserted an outside opinion would fall under due diligence. Mr. Cornick continued by saying Mr. Koellermeier was not technically qualified to determine rental rates and these rates may come into question at some later date.

Commissioner Carroll asked if the Board wished to revisit its decision to have Mr. Koellermeier determine the rental rates. None of the IWB members expressed an interest in doing so. Commissioner Carroll suggested the TWD Commissioners-Elect, after taking office, could do their own evaluation if they so desired. The TWD representative could present that information to the IWB at their next meeting.

10. Water Supply Options

- Mr. Goodrich noted there was a recent peak of 12.5 million gallons per day (mgd).

- Current water suppliers/sources include:
 - The Joint Water Commission
 - The City of Lake Oswego
 - A City-owned groundwater well
 - The Portland water contract
- The City of Tigard is not taking any water from ASR wells yet. Injection has ceased for the summer.
- The prediction is for a normal summer, and the City is well prepared to meet demand.

Mr. Koellermeier reported the new ASR well is at a depth of 900-feet and there appears to be more water in this well than was found at this point in the existing 2.5 million gallon well. This well is slated to be operational by 2009.

13. Next Meetings –

- June 19, 2007, 6:30 p.m.
Joint Meeting with the Tigard City Council
Tigard City Hall, 13125 SW Hall Blvd., Tigard Oregon
- July 11, 2007, 5:30 pm
Location to be announced
- July 17, 2007, 6:30 p.m.
Joint Meeting with the Tigard and Lake Oswego City Councils

11. Informational Items

Mr. Koellermeier informed the Board that tours of the Barney Reservoir would be offered again this summer. None of the Commissioners expressed an interest in taking the tour.

12. Non-Agenda Items: None

14. Adjournment:

At 7:19 p.m. Commissioner Winn motioned to adjourn the meeting; Commissioner Buehner seconded the motion. The motion was approved by unanimous vote.


Greer A. Gaston, IWB Recorder

Date: June 13, 2007